

1 LEWIS BRISBOIS BISGAARD & SMITH LLP  
Lane J. Ashley - SBN 073296  
2 N. David Lyons - SBN 66661  
Jeffrey A. Meyers - SBN 175474  
3 221 North Figueroa Street, Suite 1200  
Los Angeles, California 90012  
4 Telephone: (213) 250-1800  
Facsimile: (213) 481-0621  
5

6 Attorneys for Defendant NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA  
7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 PACIFIC COAST BUILDING PRODUCTS, )  
INC., )

12 Plaintiff, )

13 v. )

14 NATIONAL UNION FIRE INSURANCE )  
15 COMPANY, )

16 Defendant. )  
17

CASE NO. CIV. S-04-1059 LKK (KJM)

**DEFENDANT NATIONAL UNION'S  
DISCLOSURE OF TRIAL EXPERTS**

18 Defendant National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union")  
19 hereby lists the following expert witnesses whom it now anticipates calling as part of its case in  
20 chief at trial.

21 **PRELIMINARY STATEMENT**

22 This list is based on plaintiff's allegations and contentions as articulated thus far in its  
23 pleadings and discovery responses, as well as on the present procedural posture of the case. The  
24 Court has not yet ruled on National Union's Motion for complete or partial summary judgment,  
25 which was heard, and taken under submission, on November 19, 2004. The ruling on that Motion  
26 may limit or narrow the issues to be tried, and may thereby affect the need for or scope of expert  
27 testimony at trial. Also, depositions have been noticed but not yet taken, National Union has not yet  
28 responded to plaintiff's First Request For Production Of Documents served on December 23, 2004,

1 and additional discovery is pending or may occur. National Union reserves the right to amend or  
2 supplement this Disclosure in light of such further developments if and as appropriate. For those  
3 same reasons, as well as delay by plaintiff and/or its former law firms in producing the firms' file  
4 materials in response to subpoenas from National Union, it is anticipated that the attached expert  
5 reports will be supplemented when additional discovery and/or court ruling(s) become available.  
6 All experts will be made available for deposition concerning materials reviewed and opinions to  
7 which they expect to testify at mutually convenient dates before the discovery cutoff.

8 **EXPERT WITNESSES**

9 1. Andre E. Jardini, c/o Knapp, Peterson & Clarke, 500 North Brand Boulevard, 20<sup>th</sup>  
10 Floor, Glendale, California 91203-1904.

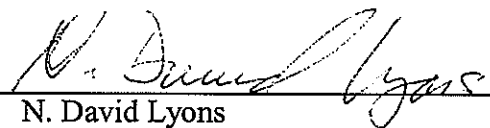
11 Attached hereto as Exhibit A is a copy of Mr. Jardini's expert report, which includes a  
12 summary of his qualifications and a listing of his deposition and trial testimony as an expert over the  
13 past four years. For the reasons stated above, it is anticipated that the report will be supplemented  
14 when additional discovery and/or court ruling(s) become available.

15 2. Robert L. Siems, 3683 Clipper Mill Road, Baltimore, Maryland 21211.

16 Attached hereto as Exhibit B is a copy of Mr. Siems' expert report and CV, which include a  
17 summary of his qualifications and a listing of his deposition and trial testimony as an expert over the  
18 past four years. For the reasons stated above, it is anticipated that the report will be supplemented  
19 when additional discovery and/or court ruling(s) become available.

20  
21  
22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23  
24 DATED: January 7, 2005

25 By   
N. David Lyons  
26 Attorneys for Defendant NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA  
27  
28

# EXHIBIT “A”

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

3  
4  
5  
6  
7

## 8

9  
0  
1  
2  
3  
4  
5

6  
7

8

9  
0  
1  
2  
3  
4  
5

5  
7  
3

1 arbitrations and hearings in various courts of general jurisdiction concerning attorney fee  
2 disputes pursuant to California Civil Code section 2860.

3 7. I have been employed at Knapp, Petersen & Clarke since its inception as a  
4 law firm in 1981. My practice consists predominantly of trial work. I have tried more than  
5 50 jury trials to conclusion during my tenure with the firm. I am a member of the American  
6 Board of Trial Advocates. Attached hereto as **Exhibit 1** is a listing of some of my trial  
7 experiences from 1986 to the present. These trials cover a wide variety of subject areas,  
8 including environmental issues, employment issues, business torts, complex insurance  
9 issues as well as insurance bad faith and other areas.

10 8. Attached hereto as **Exhibit 2** is a listing of my deposition and trial testimony  
11 as an expert witness over at least the last four years.

12 9. Based on my significant experience relating to legal audit matters and our  
13 firm's belief that there was a need for such a service in the legal community, in October of  
14 1991, Knapp, Petersen & Clarke established KPC Legal Audit Services, Inc. I am the  
15 founder and the President of that company.

16 10. KPC Legal Audit Services, Inc. is a dba of Knapp, Petersen & Clarke. The  
17 company specializes in the review and audit of legal billings and consulting on legal cost  
18 containment.

19 11. Since 1991, KPC Legal Audit Services, Inc. has conducted at least 500 audits  
20 throughout the State of California as well as in other states. Cumulative billings audited  
21 well exceed \$500 million.

22 12. KPC Legal Audit has reviewed billing relating to a wide variety of different  
23 types of litigation as well as insurance matters, real estate matters, transactional matters and  
24 corporate legal work. Such matters include public interest, environmental and other cases  
25 involving fee-shifting principles. Such matters also include many audits involving  
26 allocation of fees and costs between covered and uncovered claims involving insured  
27 matters.

28 ///

1           13. I have testified as an expert witness in more than 50 superior court matters  
2 regarding reasonableness of legal fees, both on behalf of the proponent of such fees and on  
3 behalf of the opposing party. Compensation for my study and testimony is billed out at  
4 \$165 per hour for auditor time and \$75 per hour for assistant auditor time. If my services  
5 are requested for deposition testimony, trial testimony, or expert reports or declarations,  
6 my hourly rate is \$395 per hour.

7 BACKGROUND INFORMATION

8           14. My analysis has included the review of pleadings in this matter, *Pacific Coast*  
9 *Building Products, Inc. v. National Union Fire Insurance Company*, including

10 Motion by National Union for complete or partial summary judgment

11 National Union's memorandum of points and authorities in support of its motion for  
12 summary judgment

13 National Union's separate statement of undisputed material facts

14 Declaration of Patrick Fredette in support of National Union's motion for summary  
15 judgment

16 Declaration of N. David Lyons in support of National Union's motion for summary  
17 judgment

18 National Union request for judicial notice

19 Pacific Coast Building Products opposition to National Union's motion for summary  
20 judgment

21 Pacific Coast Building Products responses to National Union's separate statement

22 National Union's reply memorandum in support of motion for summary judgment

23 Reply declaration of N. David Lyons in support of motion for summary judgment

24           15. I have also reviewed all documents attached to defendants documents in  
25 support of their motion for summary judgment, including Pacific Coast Building Products  
26 verified complaint filed in Sacramento Superior Court and all documents attached thereto,  
27 as well as the deposition summaries of Morgan A. Chivers.

28 ///

1           16. I have been asked to opine as to the reasonableness of attorney fees and costs  
2 incurred by three firms. The amounts sought are pre-tender, post tender and post directed  
3 verdict fees and costs from the law firms of Boutin, Dentino, Gibson, DiGuisto, Hodell &  
4 West ("Boutin"); Farmer, Murphy, Smith & Alliston ("Farmer"); and Wagner, Kirkman,  
5 Blaine & Youmans ("Wagner"). Fees and costs requested were produced by Pacific under  
6 Bates PCB-01028 through PCB-01582. These invoices and records have also been  
7 reviewed and analyzed.

8 OPINION

9           17. Attached as **Exhibit 3** are schedules which were prepared directly from the  
10 invoices provided by the three firms. They are:

11               Fees and costs billed per statement (globally, \$662,095.00 in fees,\$91,695.66  
12 in costs with a total of \$753,790.66)

13               Index of Billing Personnel (18 timekeepers; 3,407.85 hours)

14               Outline of Services (showing total hours and timekeepers, per event)

15               Examples of block billing

16               Examples of interoffice conferencing

17               Examples of vague billing entries

18               Examples of secretarial or administrative billing entries

19               Itemization of costs

20           18. In my analysis of the pleadings and billing records, I found there to be  
21 significant questions as to compensability for fees billed by Boutin, Farmer and Wagner.  
22 These issues include duplication of effort, block and vague billing entries,  
23 secretarial/administrative billing entries, excessive inter- and intra-office communications  
24 pre-tender fees and fees requested after Pacific was granted a directed verdict on Chivers'  
25 fraud/negligent misrepresentation causes of action on April 25, 2002.

26 ALLOCATION ISSUES

27           19. Pacific Coast Building Products commenced an action in 1997 in Sacramento  
28 County Superior Court against its former employee Morgan A. Chivers. The lawsuit

1 concerned ownership of an asphalt shingle recycling process.

2 20. It is assumed in this opinion, and, I believe, agreed by the parties, that Pacific  
3 Coast Buildings' complaint against Chivers for affirmative relief does not have the benefit  
4 of a defense under the National Union Fire Insurance Company policies here involved. No  
5 claim for damages which would trigger coverage and a defense would exist concerning the  
6 action brought by Pacific Coast Building against Chivers.

7 21. Chivers filed a cross-complaint in the action. It is contended that an  
8 obligation exists to defend Pacific Coast Building against the Chivers cross-complaint.  
9 Assuming that such a duty exists, it must be determined what part of the services rendered  
10 by the law firms retained by Pacific were in defense of the Chivers cross-complaint, as  
11 opposed to prosecuting the claims in Pacific's complaint.

12 22. It is my understanding that, as of the date of this report, the file materials  
13 maintain by counsel for Pacific concerning the *Pacific v. Chivers* litigation have not been  
14 made available to counsel for National Union. Those materials have not, therefore, as yet,  
15 been made available for my review.

16 23. It is important to the allocation process that the pleadings, correspondence  
17 documents and other file materials maintained concerning the underlying *Pacific Coast v.*  
18 *Chivers* litigation be reviewed. In the absence of that review, no complete opinion is  
19 possible.

20 24. Nonetheless, it is readily apparent that significant efforts were undertaken by  
21 counsel for Pacific Coast Building which were in furtherance of its claims under the  
22 original complaint. Those services would not be fairly compensable under any National  
23 Union policy. The determination of this issue pends awaiting the opportunity to review the  
24 file materials when made available.

25 SUMMARY OF SERVICES

26 25. Attorneys for Pacific request reimbursement for a total of 3,407.85  
27 hours\\$662,095.00 in fees. Approximately 64% of that time, or 2,178 hours, was billed  
28 with respect to the identifiable activities which are set forth in the attached Outline of



1 Services. Examples of such activities include hours billed for work performed in  
2 attendance at depositions (6 deponents, including Almaula, Allman, Ploense, Glass,  
3 Chivers and Peterson), various motions for attorney fees and to tax costs. Other motions  
4 included a motion for reconsideration and directed verdict, motion to transfer  
5 venue/reconsideration, motion to continue and motion for separate trial. Trial was  
6 scheduled to begin in August 2001 and was continued to March and April 2002 and took  
7 place over an eight-day period.

8 26. The remaining 1,229 hours out of the total 3,407 billed by plaintiff's counsel  
9 were spent in such routine activities as conducting telephone conferences, interoffice  
10 conferences, preparing routine correspondence and memoranda or engaging in  
11 administrative activities.

12 MISSING INVOICE PAGES

13 27. We are in receipt of one invoice dated May 15, 2002 in the amount of  
14 \$204,888.35. This invoice was Bates stamped PCB-01424 through PCB-01431; however,  
15 the invoice was missing pages one through 10, and page 18. Without this information, it is  
16 impossible to determine reasonableness or compensability of fees billed within the missing  
17 invoice pages. The fees and hours within these missing pages total \$108,546.25/601 hours.

18 BLOCK AND VAGUE BILLING ENTRIES

19 28. My evaluation of the bills was unduly complicated as most of the entries were  
20 block billed. Block billing lists a series of activities performed each day and an aggregate  
21 amount of time, rather than a single entry for each task. Block billing makes it difficult to  
22 determine the amount of time spent on each individual task.

23 29. By way of example, the courts have addressed the issue of block billing. In  
24 *In Re Leonard Jed Company*, 103 B.R. 706, the court stated:

25 That "lumping" time was disapproved by bankruptcy courts for two  
26 reasons. First, it permits an applicant to seek reimbursement for minor tasks  
27 which, if reported individually, would not be compensable. Second, the court  
28 is prevented from determining "whether individual tasks were expeditiously

1 performed within a reasonable period of time because it is impossible to  
2 separate into components the services which have been lumped together."

3 30. The court found approximately 60 instances of block billing in the fee  
4 application, and with few exceptions, disallowed all of them.

5 31. Reviewing the invoices provided was complicated not only based on block  
6 billing, but also because some of the entries within the blocks contain inadequate  
7 description. These entries do not adequately describe the work performed and do not set  
8 forth the purpose of the work. Examples of these vague entries include "review prior  
9 outlines," and "organize to prepare for trial."

10 32. In this instance I believe a percentage reduction is warranted for block and  
11 vague billing entries. I believe a combined reduction of 10% is appropriate.

12 DUPLICATION OF EFFORT

13 33. The research and preparation for the opposition to Chivers' motion for  
14 attorney fees in December 2002 through February 2003 was performed by all three firms.  
15 A total of 266 hours was billed utilizing nine timekeepers. In addition, one attorney from  
16 each of the firms Farmer and Boutin billed over 25 hours to prepare for, travel and attend  
17 the hearing on May 23, 2003. When multiple timekeepers from the multiple firms attend  
18 the same function, legal expenses are increased dramatically.

19 34. The participation of multiple firm personnel in the same activity is evidence  
20 of an inefficient approach to the staffing (79% attorneys and 21% other billing personnel)  
21 and management of the litigation. It is my opinion that, here, whatever slight benefits  
22 might be obtained by having multiple personnel attend or participate in the same function  
23 or activity are far outweighed by the substantial increase in the legal expenses that result.

24 35. Instances in which more than one representative attended or participated in  
25 the same functions are included in the attached outline of services performed. It is not  
26 appropriate or necessary for two timekeepers to attend a meeting or telephone conference.

27 It was also likely not necessary for two attorneys to attend trial. Multiple personnel  
28 attending functions effectively inflated this billing beyond that which was necessary, or, in

1 my opinion, appropriate. I recommend a reduction of \$23,103.50 in fees for the duplication  
2 described herein. In the majority of instances, I have allowed the time billed by lead  
3 attorney Chris Gibson for each of his activities as well as paralegal support at trial by  
4 Sheryl S. Stuckey.

5 TRANSIENT BILLERS

6 36. The multiple firms here involved utilized the services of fully 18 different  
7 timekeepers. A number of the attorneys and paralegals involved expended very modest  
8 amounts of time, and their involvement was sporadic. Such billing is appropriately  
9 described as transient. The involvement of new and different personnel at different points  
10 in the litigation to perform abbreviated and sporadic services is an inefficient and wasteful  
11 firm management practice. Over the course of the three years covered by the invoices,  
12 involving the commitment of more than 3,400 total hours, numerous personnel provided  
13 services averaging less than three hours per month. For instance, the total contribution by  
14 Beland Kirk Wagner was .6 of an hour.

15 37. When resources are utilized in this fashion, there is a period of time the  
16 timekeeper must expend getting up to speed. Thereafter, due to an exit from the litigation,  
17 the experience or knowledge gained is lost.

18 38. A reasonable proxy for the determination of the amount of this inefficiency is  
19 to deduct from the amount due the time spent by all such transient timekeepers. In this  
20 case, the following timekeepers should be considered transient:

21 Carl P. Blaine

22 Craig E. Farmer

23 Kara E. Farmer

24 Roy R. Gerard

25 Steven M. Green

26 Carolyn S. Keefe

27 Jack Mulligan

28 George E. Murphy

1 Jeffrey B. Slaton

2 Beland Kirk Wagner

3 Michael R. West

4 39. The deduction of the time expended by these transient timekeepers, during  
5 the pre-directed verdict only, results in an overall reduction of 4,073.75.

6 EXCESSIVE INTER- AND INTRA-OFFICE CONFERENCING

7 40. One of the pitfalls of overstaffing is the tendency for excessive conferencing  
8 between attorneys. Attorneys from the Wagner firm spent fully 20% of the time billed on  
9 this matter in conferencing; the Farmer firm billed over 16% in intraoffice conferencing.  
10 While I recognize the need for effective communication between attorneys and the benefits  
11 of conferencing regarding specific issues, I believe that conferencing between the  
12 attorneys, particularly Farmer and Wagner, was excessive.

13 41. I recommend a reduction of time to all of the hours billed by the Farmer and  
14 Wagner firms to allow 5% of inter- and intra-office conferencing. This results in a  
15 recommended reduction of \$168 in fees to the Wagner firm and \$4,553 in fees to the  
16 Farmer firm, for the pre-directed verdict period only.

17 SECRETARIAL/ADMINISTRATIVE BILLING ENTRIES

18 42. In its itemized billing entries, Boutin, Farmer and Wagner seek to recover  
19 fees for services that are secretarial or administrative in nature and are therefore, in my  
20 view, not compensable. Examples of these line item entries are set forth on the attached  
21 schedule. It is not reasonable or standard in the community to bill time for services such as  
22 updating the calendar, coordinating service on parties, and instructive or supervisory  
23 meetings with staff.

24 43. The court decision in *LeBlanc v. Secretary of Health and Human Services*,  
25 1995 W.L. 695202 (Fed.Cl.) speaks to the issue of billing items traditionally considered a  
26 part of overhead. "While that practice may be prevalent and even generally accepted in the  
27 private sector, this court does not accept it as reasonable."

28 44. I recommend reducing the fee request by \$15,438.50 in fees based on the

1 secretarial or administrative billing entries (pre-directed verdict only) set forth on the  
2 itemized billing statements.

3 JURY CONSULTANT FEES AND COSTS

4 45. Two invoices totaling \$31,332.21 were submitted by Boutin in addition to  
5 their attorney fees and costs. These invoices were for jury consultant services provided by  
6 National Jury Project Trial Consultants. The two invoices were dated August 17, 2001 and  
7 April 22, 2002 and included \$23,944.37 in fees and \$7,387.84 in costs.

8 46. A \$2,500 jury consultant retainer was advanced within Boutin's June 14, 2001  
9 invoice. This amount was also included in the invoices submitted by National Jury Project  
10 Trial Consultants. I recommend a reduction in the amount of \$2,500 for this error.

11 COSTS DISBURSEMENTS

12 47. The three firms submitted invoices including costs in the amount of  
13 \$91,695.66.

14 48. Of the total amount of costs requested, \$22,771.70 is requested for "Admin.  
15 Costs." No itemization is made within the invoice concerning this significant charge.  
16 There were also charges for expert/consultants fees and expenses as well as travel/mileage  
17 expenses in the amounts of \$20,405.35 and \$16,323.27, respectively. Supporting  
18 documentation is entirely lacking for all these costs. In addition, I am missing a page from  
19 the invoice dated May 15, 2002 in the amount of \$6,511.22.

20 49. I do not recommend reimbursement for the post-tender portion of these  
21 categories of costs unless and until supporting documentation is provided. The resulting  
22 recommended reduction for costs is \$29,844.15.

23 PRE-TENDER, POST-TENDER AND POST DIRECTED VERDICT ALLOCATION

24 50. It is my understanding it is agreed that the tender date on the underlying  
25 action is November 16, 2000. However, within the invoice dated December 11, 2000 there  
26 were some pre-tender fees and costs for which I recommend a reduction. This amount is  
27 \$562.50 in fees, \$80.49 in costs, for a total of \$642.99.

28 ///

51. On April 25, 2002, Pacific was granted a directed verdict as to the cross-complaint filed by Chivers. As stated in the summary fees and costs set forth on the attached schedule, there was a substantial amount billed in the time period after the directed verdict, in the amount of \$262,744.75 in fees, \$43,914.44 in costs for a total of \$306,659.19. Separate from the above mentioned reductions, I believe a timeline allocation should be applied to the total fees and costs billed. This allocation would realize a reduction for all post-directed verdict fees and costs as non-compensable as a defense expense, since the cross complaint specific to Pacific's defense under the policy was dismissed.

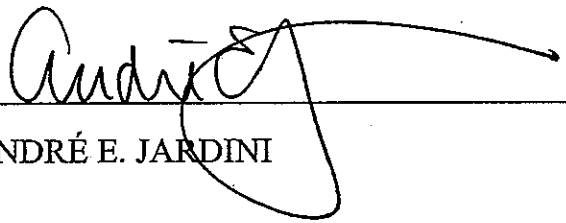
#### CONCLUSION

Total attorney fees	\$753,790.66
Jury consultant fees	\$31,332.21
Total Fees	\$785,122.87
Recommended Reductions:	
Pre-tender fees	(\$562.50)
Post-Directed Verdict	(\$262,744.75)
Missing invoice information	(\$108,546.25)
Interoffice Conferencing (post tender only)	(\$4,721.00)
Secretarial/Administrative billing entries (post tender only)	(\$15,438.50)
Transient	(\$4,073.75)
Fee Subtotal	\$393,109.87
Vague billing entries and block billing format (10%)	(\$39,310.99)
<b>Total maximum fees</b>	<b>\$353,798.88</b>
Total Costs	\$91,695.66
Pre-tender costs	(\$80.49)
Post-directed verdict costs	(\$43,914.43)
Jury Consultant fee advanced within invoice	(\$2,500.00)
Undocumented costs	(\$29,844.15)
<b>Total maximum costs</b>	<b>\$15,356.59</b>
<b>Total maximum fees and costs</b>	<b>\$369,155.47</b>

1           52. In addition to my concerns about the reasonableness of the invoices  
2 presented, the invoices as presented did not allocate between affirmative and defense  
3 billing entries. As a result, it would be necessary to review deposition transcripts and  
4 additional work product in the underlying matter to determine what other possible  
5 reductions may be necessary to determine proper compensation for defense of the cross-  
6 complaint only.

7           53. Pending receipt of missing invoice information and clarification of certain  
8 costs and billing entries, I believe that a reasonable, good faith reimbursement, at this time,  
9 should be no more than ½ of the maximum fees and costs, after reductions, of \$7,678.30 in  
10 fees and in costs.

11           Executed this 7th day of January 2005 at Glendale, California.

12  
13  
14   
15 \_\_\_\_\_  
16           ANDRÉ E. JARDINI  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**TOTAL FEES &  
COSTS BILLED**



# PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW

## Fees and Costs Billed per Statement

### Pre-Tender, Post-Tender and Post Directed Verdict

Re: All Firms

Statement Date	Fees Billed	Costs Billed	Total
<b>Pre-Tender</b>			
12/11/2000	\$562.50	\$80.49	\$642.99
<b>Pre-Tender Total</b>	<b>\$562.50</b>	<b>\$80.49</b>	<b>\$642.99</b>
<b>Post-Tender</b>			
12/11/2000	\$5,054.00	\$239.66	\$5,293.66
2/22/2001	\$6,505.00	\$100.43	\$6,605.43
4/20/2001	\$12,755.00	\$519.95	\$13,274.95
5/21/2001	\$2,594.50	\$103.78	\$2,698.28
6/14/2001	\$1,275.00	\$2,551.00	\$3,826.00
7/18/2001	\$8,728.00	\$602.51	\$9,330.51
8/15/2001	\$53,971.00	\$2,692.44	\$56,663.44
9/13/2001	\$30,717.00	\$3,686.16	\$34,403.16
10/18/2001	\$425.00	\$18.50	\$443.50
11/12/2001	\$475.00	\$317.33	\$792.33
12/7/2001	\$75.00	\$3.00	\$78.00
2/13/2002	\$2,529.00	\$107.91	\$2,636.91
3/12/2002	\$21,209.75	\$2,318.05	\$23,527.80
4/19/2002	\$111,808.75	\$22,436.73	\$134,245.48
5/15/2002	\$140,665.75	\$12,003.28	\$152,669.03
<b>Post-Tender Total</b>	<b>\$398,787.75</b>	<b>\$47,700.73</b>	<b>\$446,488.48</b>
<b>Post Directed Verdict</b>			
5/15/2002	\$34,805.50	\$17,413.82	\$52,219.32
6/15/2002	\$38,241.75	\$18,663.69	\$56,905.44
8/12/2002	\$4,025.00	\$452.99	\$4,477.99
9/11/2002	\$9,429.25	\$387.43	\$9,816.68
10/3/2002	\$6,607.00	\$405.95	\$7,012.95
11/7/2002	\$1,746.50	\$69.86	\$1,816.36
12/4/2002	\$5,466.00	\$221.64	\$5,687.64
12/31/2002	\$22,150.00	\$495.15	\$22,645.15
1/9/2003	\$20,719.75	(\$1,047.43)	\$19,672.32
1/31/2003	\$2,254.00	\$5.00	\$2,259.00

<b>Statement Date</b>	<b>Fees Billed</b>	<b>Costs Billed</b>	<b>Total</b>
1/31/2003	\$32,503.50	\$428.31	\$32,931.81
2/7/2003	\$23,057.00	\$2,290.14	\$25,347.14
2/28/2003	\$25,075.00	\$393.71	\$25,468.71
2/28/2003	\$1,170.00	\$0.00	\$1,170.00
3/4/2003	\$9,697.00	\$2,605.57	\$12,302.57
3/31/2003	\$225.00	\$280.14	\$505.14
4/3/2003	\$530.50	\$21.22	\$551.72
4/30/2003	\$350.00	\$0.00	\$350.00
5/5/2003	\$1,667.50	\$66.70	\$1,734.20
5/31/2003	\$8,875.00	\$153.65	\$9,028.65
6/4/2003	\$12,130.50	\$485.22	\$12,615.72
6/30/2003	\$200.00	\$49.01	\$249.01
7/14/2003	\$962.50	\$38.50	\$1,001.00
8/8/2003	\$27.50	\$1.10	\$28.60
9/4/2003	\$664.00	\$26.56	\$690.56
10/3/2003	\$165.00	\$6.51	\$171.51
<b>Post Directed Verdict Total</b>	<b>\$262,744.75</b>	<b>\$43,914.44</b>	<b>\$306,659.19</b>
<b>Total</b>	<b>\$662,095.00</b>	<b>\$91,695.66</b>	<b>\$753,790.66</b>

**Boutin, Dentino, Gibson,  
DiGiusto, Hodell & West**

**PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW**

**Fees and Costs Billed per Statement**

**Pre-Tender, Post-Tender and Post Directed Verdict**

**Re: Boutin, Dentino, Gibson, Di Giusto, Hodell and West**

Statement Date	Fees Billed	Costs Billed	Total
<b>Pre-Tender</b>			
12/11/2000	\$562.50	\$80.49	\$642.99
<b>Pre-Tender Total</b>	<b>\$562.50</b>	<b>\$80.49</b>	<b>\$642.99</b>
<b>Post-Tender</b>			
12/11/2000	\$5,054.00	\$239.66	\$5,293.66
2/22/2001	\$6,505.00	\$100.43	\$6,605.43
4/20/2001	\$12,755.00	\$519.95	\$13,274.95
5/21/2001	\$2,594.50	\$103.78	\$2,698.28
6/14/2001	\$1,275.00	\$2,551.00	\$3,826.00
7/18/2001	\$8,728.00	\$602.51	\$9,330.51
8/15/2001	\$53,971.00	\$2,692.44	\$56,663.44
9/13/2001	\$30,717.00	\$3,686.16	\$34,403.16
10/18/2001	\$425.00	\$18.50	\$443.50
11/12/2001	\$475.00	\$317.33	\$792.33
12/7/2001	\$75.00	\$3.00	\$78.00
2/13/2002	\$2,529.00	\$107.91	\$2,636.91
3/12/2002	\$21,209.75	\$2,318.05	\$23,527.80
4/19/2002	\$111,808.75	\$22,436.73	\$134,245.48
5/15/2002	\$140,665.75	\$12,003.28	\$152,669.03
<b>Post-Tender Total</b>	<b>\$398,787.75</b>	<b>\$47,700.73</b>	<b>\$446,488.48</b>
<b>Post Directed Verdict</b>			
5/15/2002	\$34,805.50	\$17,413.82	\$52,219.32
6/15/2002	\$38,241.75	\$18,663.69	\$56,905.44
8/12/2002	\$4,025.00	\$452.99	\$4,477.99
9/11/2002	\$9,429.25	\$387.43	\$9,816.68
10/3/2002	\$6,607.00	\$405.95	\$7,012.95
11/7/2002	\$1,746.50	\$69.86	\$1,816.36
12/4/2002	\$5,466.00	\$221.64	\$5,687.64
1/9/2003	\$20,719.75	(\$1,047.43)	\$19,672.32
2/7/2003	\$23,057.00	\$2,290.14	\$25,347.14
3/4/2003	\$9,697.00	\$2,605.57	\$12,302.57

<b>Statement Date</b>	<b>Fees Billed</b>	<b>Costs Billed</b>	<b>Total</b>
4/3/2003	\$530.50	\$21.22	\$551.72
5/5/2003	\$1,667.50	\$66.70	\$1,734.20
6/4/2003	\$12,130.50	\$485.22	\$12,615.72
7/14/2003	\$962.50	\$38.50	\$1,001.00
8/8/2003	\$27.50	\$1.10	\$28.60
9/4/2003	\$664.00	\$26.56	\$690.56
10/3/2003	\$165.00	\$6.51	\$171.51
<b>Post Directed Verdict Total</b>	<b>\$169,942.25</b>	<b>\$42,109.47</b>	<b>\$212,051.72</b>
<b>Total</b>	<b>\$569,292.50</b>	<b>\$89,890.69</b>	<b>\$659,183.19</b>



**PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW**

**Fees and Costs Billed per Statement**

**Pre-Tender, Post-Tender and Post Directed Verdict**

**Re: Farmer, Murphy, Smith and Alliston**

<b>Statement Date</b>	<b>Fees Billed</b>	<b>Costs Billed</b>	<b>Total</b>
<b>Post Directed Verdict</b>			
12/31/2002	\$22,150.00	\$495.15	\$22,645.15
1/31/2003	\$32,503.50	\$428.31	\$32,931.81
2/28/2003	\$25,075.00	\$393.71	\$25,468.71
3/31/2003	\$225.00	\$280.14	\$505.14
4/30/2003	\$350.00	\$0.00	\$350.00
5/31/2003	\$8,875.00	\$153.65	\$9,028.65
6/30/2003	\$200.00	\$49.01	\$249.01
<b>Post Directed Verdict Total</b>	<b>\$89,378.50</b>	<b>\$1,799.97</b>	<b>\$91,178.47</b>
<b>Total</b>	<b>\$89,378.50</b>	<b>\$1,799.97</b>	<b>\$91,178.47</b>





**PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW**

**Fees and Costs Billed per Statement**

**Pre-Tender, Post-Tender and Post Directed Verdict**

**Re: Wagner, Kirkman, Blaine and Youmans**

Statement Date	Fees Billed	Costs Billed	Total
Post Directed Verdict			
1/31/2003	\$2,254.00	\$5.00	\$2,259.00
2/28/2003	\$1,170.00	\$0.00	\$1,170.00
Post Directed Verdict Total	\$3,424.00	\$5.00	\$3,429.00
Total	\$3,424.00	\$5.00	\$3,429.00



# PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW

Re: All Firms

## Index of Billing Personnel

Timeekeeper	California Bar Admittance Date	Rate	Hours Billed
Partner			
Blaine, Carl P.	1975	\$235.00	1.90
Campbell, Mark A.	1980	\$250.00	256.40
Farmer, Craig E.	1974	\$250.00	77.40
Gelhaar, Ned M.	1992	\$185.00	19.90
		\$195.00	139.30
		\$205.00	524.70
		\$215.00	38.20
Gibson, Chris	1976	\$225.00	8.60
		\$250.00	236.60
		\$265.00	704.60
		\$275.00	118.70
Murphy, George E.	1989	\$250.00	20.45
Wagner, Belan Kirk	1976	\$325.00	0.60
West, R. Michael	1978	\$275.00	0.25
		\$325.00	15.60
(8) \$241.04 Partner Total (63.48%)			2,163.20
Associate			
Chase, Michael E.	1998/NY; 2001/CA	\$165.00	127.50
		\$185.00	0.50
Cook, Kellie A.	2000	\$125.00	172.00
		\$135.00	36.90
Farmer, Kara E.	2004	\$80.00	10.20
Girard, Roy R.	1982	\$215.00	7.50
		\$225.00	5.20
Green, Stephen M.	2002	\$75.00	15.40
Keefe, Carolyn S.	2002	\$75.00	17.35

Rogers, Danielle Y.	2000	\$135.00	132.40
		\$145.00	24.30
Slaton, Jeffrey B.	1999	\$145.00	2.50
(8) \$136.72 Associate Total (16.19%)			551.75
Other Billing Personnel			
Mulligan, Jack	N/A	\$80.00	0.70
Stuckey, Sheryl S.	N/A	\$85.00	91.70
		\$95.00	564.50
		\$105.00	36.00
(2) \$94.18 Other Billing Personnel Total (20.33%)			692.90
(18) \$194.29 All Timekeepers Total			3,407.85

**TOTAL HOURS BILLED**

# PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW

Total Hours Billed per Statement  
Pre-Tender, Post-Tender and Post Directed Verdict  
Re: All Firms

Timekeeper	Pre Tender		Pre-Tender		Post Tender										Total	
	12/11/2000	12/11/2000	Total	12/11/2000	2/22/2001	4/20/2001	5/21/2001	6/14/2001	7/18/2001	8/15/2001	9/13/2001	10/18/2001	11/12/2001	12/12/2001		
Blaine, Carl P.			0.00													
Campbell, Mark A.			0.00													
Chase, Michael E.			0.00													
Cook, Kellie A.			0.00			49.30	6.00	2.00	49.20	65.50						
Farmer, Craig E.			0.00													
Farmer, Kara E.			0.00													
Gelhaar, Ned M.		19.90	0.00		11.50	1.50	0.10		0.40	74.50	51.30					
Gibson, Chris	2.50	6.10	2.50		15.60	25.20	7.30	4.10	10.00	107.90	62.60	1.70		1.90		
Girard, Roy R.			0.00													
Green, Stephen M.			0.00							13.10	2.30					
Keefe, Carolyn S.			0.00							3.85	0.50					
Mulligan, Jack			0.00													
Murphy, George E.			0.00													
Rogers, Danielle Y.			0.00													
Slaton, Jeffrey B.			0.00		2.50											
Snuckey, Sheryl S.			0.00							34.60	57.10					
Wagner, Belan Kirk			0.00													
West, R. Michael			0.00							0.25						
<b>Total</b>	<b>2.50</b>	<b>26.00</b>	<b>2.50</b>	<b>29.60</b>	<b>76.00</b>	<b>13.40</b>	<b>6.10</b>	<b>59.60</b>	<b>299.70</b>	<b>173.80</b>	<b>1.70</b>	<b>1.90</b>				

Timekeeper	Post-Tender					Post-Tender Total	Post Directed Verdict					
	12/7/2001	2/13/2002	3/12/2002	4/19/2002	5/15/2002		5/15/2002	6/15/2002	8/12/2002	9/11/2002	10/3/2002	11/7/2002
Blaine, Carl P.						0.00						
Campbell, Mark A.						0.00						
Chase, Michael E.					28.20	28.20	73.00	23.90	1.90		0.50	
Cook, Kellie A.			1.60	28.70		202.30	6.60					
Farmer, Craig E.						0.00						
Farmer, Kara E.						0.00						
Gelhaar, Ned M.		4.30		155.20	56.50	375.20	232.10	75.30				
Gibson, Chris	0.30	5.50	64.00	210.30	47.50	570.00	208.30	47.90	12.20	26.10	11.80	3.60
Girard, Roy R.						0.00						
Green, Stephen M.						15.40						
Keefe, Carolyn S.				13.00		17.35						
Mulligan, Jack						0.00			0.70			
Murphy, George E.						0.00						
Rogers, Danielle Y.			22.80	12.10		34.90	17.90	1.30		17.80	3.00	5.80
Slaton, Jeffrey B.						2.50						
Stuckey, Sheryl S.		2.00	5.10	182.20	34.70	315.70	262.90	35.20		0.30	31.50	0.10
Wagner, Belan Kirk						0.00						
West, R. Michael			1.45	1.45		3.15	0.75	8.15	1.30	0.25		
Total	0.30	11.80	94.95	602.95	166.90	1,564.70	801.55	191.75	16.10	44.15	36.80	9.50

Timekeeper	Post Directed Verdict											
	12/4/2002	12/31/2002	1/9/2003	1/31/2003	2/7/2003	2/28/2003	3/4/2003	3/31/2003	4/3/2003	4/30/2003	5/5/2003	5/31/2003
Blaine, Carl P.				1.90								
Campbell, Mark A.		57.00		86.30		81.80		0.90		1.40		28.20
Chase, Michael E.					0.50							
Cook, Kellie A.												
Farmer, Craig E.		13.90		37.70		18.50						7.30
Farmer, Kara E.				10.20								
Gelhaar, Ned M.			1.30		38.20							
Gibson, Chris	13.90		53.50		38.40		25.30		1.70		5.80	
Girard, Roy R.				7.50		5.20						
Green, Stephen M.												
Keefe, Carolyn S.												
Mulligan, Jack												
Murphy, George E.		17.70		2.75								
Rogers, Danielle Y.	10.60		41.10		11.10		6.80				0.50	
Slaton, Jeffrey B.												
Stuckey, Sheryl S.	3.70		6.80		18.40		16.70		0.60			
Wagner, Belan Kirk				0.60								
West, R. Michael			0.25		2.00							
<b>Total</b>	<b>28.20</b>	<b>88.60</b>	<b>102.95</b>	<b>146.95</b>	<b>108.60</b>	<b>105.50</b>	<b>48.80</b>	<b>0.90</b>	<b>2.30</b>	<b>1.40</b>	<b>6.30</b>	<b>35.50</b>



Timekeeper	Post/Directed Verdict						Post Directed Verdict	Grand Total
	6/4/2003	6/30/2003	7/14/2003	8/8/2003	9/4/2003	10/3/2003		
Blaine, Carl P.							1.90	1.90
Campbell, Mark A.		0.80					256.40	256.40
Chase, Michael E.							99.80	128.00
Cook, Kellie A.							6.60	208.90
Farmer, Craig E.							77.40	77.40
Farmer, Kara E.							10.20	10.20
Gelhaar, Ned M.							346.90	722.10
Gibson, Chris	41.00		3.50	0.10	2.30	0.60	496.00	1,068.50
Girard, Roy R.							12.70	12.70
Green, Stephen M.							0.00	15.40
Keefe, Carolyn S.							0.00	17.35
Mulligan, Jack							0.70	0.70
Murphy, George E.							20.45	20.45
Rogers, Danielle Y.	5.90						121.80	156.70
Slaton, Jeffrey B.							0.00	2.50
Stuckey, Sheryl S.					0.30		376.50	692.20
Wagner, Belan Kirk							0.60	0.60
West, R. Michael							12.70	15.85
<b>Total</b>	<b>46.90</b>	<b>0.80</b>	<b>3.50</b>	<b>0.10</b>	<b>2.60</b>	<b>0.60</b>	<b>1,840.65</b>	<b>3,407.85</b>

**OUTLINE OF  
SERVICES PERFORMED**

# PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW

## Re: All Firms Outline of Services

Date		Firm	Description	Timekeeper	Hours Billed
From	To				
Pre Directed Verdict					
11/21/2000		Boutin,Dentino	Outline pre-trial work and review Contra Costa County court rules	CG	1.30
11/22/2000	11/28/2000	Boutin,Dentino	Review venue issues and prepare motion to transfer venue/reconsideration	CG, NMG	20.30
12/1/2000	12/31/2000	Boutin,Dentino	No invoice or billing information submitted		
1/5/2001	1/15/2001	Boutin,Dentino	Prepare reply to opposition to motion to transfer venue	CG, NMG, JBS	22.60
1/29/2001		Boutin,Dentino	Prepare for and attend meeting with Nick Kalanges	CG	2.50
2/1/2001	2/28/2001	Boutin,Dentino	No invoice or billing information submitted		
3/5/2001	7/23/2001	Boutin,Dentino	Prepare trial brief, including research regarding which claims/defense should be heard by court, not the jury	KAC, CG	133.10
3/5/2001	8/22/2001	Boutin,Dentino	Trial preparation, including notice to produce witness and documents at trial, motions in limine, motion to amend answer, special verdict and coordination of new trial date	CG, SSS, NMG	227.50
3/6/2001		Boutin,Dentino	Meeting with N. Kalanges and J. Thompson regarding strategy	CG	1.00
3/11/2001		Boutin,Dentino	Legal research regarding conflicts of interest for attorneys employed by U.S. government	DYR	1.00
4/26/2001	4/27/2001	Boutin,Dentino	Review Almaula's deposition and exhibits	CG	3.90
5/21/2001		Boutin,Dentino	Prepare for and participate in telephone conference with Karen Koonan regarding case facts and issues	CG	2.50
5/31/2001	6/13/2001	Boutin,Dentino	PCBP motion for directed verdict on Chivers' cross complaint	KAC	14.50
6/21/2001	7/25/2001	Boutin,Dentino	Research regarding impeachment v. opinion testimony	KAC	20.30
6/26/2001	7/5/2001	Boutin,Dentino	Opposition to motion to quash Hillman subpoena	CG	2.40
7/11/2001	7/18/2001	Boutin,Dentino	PCBP motion for separate trial on equitable claims	CG	9.70

Date		Firm	Description	Timekeeper	Hours Billed
From	To				
7/13/2001		Boutin,Dentino	Prepare for and attend meeting with D. Lucchetti and N. Kalanges	CG	2.40
7/19/2001	8/1/2001	Boutin,Dentino	Legal research regarding lost profits remedy for fraud action	SMG	12.20
7/23/2001		Boutin,Dentino	Legal research regarding statute of limitations on infliction of emotion distress	CSK	3.00
7/24/2001		Boutin,Dentino	Prepare for and attend mock trial	CG, NMG	28.80
7/25/2001		Boutin,Dentino	Prepare for and attend meeting with Karen Koonan for witness preparation	NMG, CG	10.70
7/26/2001		Boutin,Dentino	Prepare, travel and attend meeting with Mutta	NMG	10.80
7/30/2001		Boutin,Dentino	Meeting in Oakland with jury consultant to prepare trial testimony	CG	9.50
7/30/2001		Boutin,Dentino	Prepare, travel and attend meeting with Mutta	NMG	7.40
7/31/2001		Boutin,Dentino	Prepare for and travel to Reno for meeting with Hunter	NMG	4.60
8/1/2001		Boutin,Dentino	Prepare for and attend meeting with Gary Hunter	NMG	3.40
8/1/2001		Boutin,Dentino	Travel to Oakland	CG	2.00
8/2/2001		Boutin,Dentino	Return travel from Reno	NMG	2.50
8/3/2001		Boutin,Dentino	Appear for trial	CG	9.10
8/29/2001		Boutin,Dentino	Legal research regarding dismissal under five-year statute	CG	1.30
9/26/2001	9/27/2001	Boutin,Dentino	Prepare stipulation and order continuing trial	CG	0.90
10/1/2001	10/31/2001	Boutin,Dentino	Telephone conference and letters to witnesses, experts about trial	CG	1.90
11/21/2001		Boutin,Dentino	Prepare memo regarding rebuttal experts at trial	CG	0.30
1/22/2002	4/23/2002	Boutin,Dentino	Trial preparation for continued trial	CG, DYR, KAC, SSS, NMG, RMW	273.20
1/31/2002		Boutin,Dentino	Prepare for and attend meeting with Greg Cherry	NMG	1.50
2/13/2002	2/14/2002	Boutin,Dentino	Prepare for deposition of Satish Almaula	CG	5.50
2/14/2002		Boutin,Dentino	Prepare for deposition of Allman	CG	3.60
2/15/2002		Boutin,Dentino	Prepare for and attend deposition of Allman	CG	4.10

Date		Firm	Description	Timekeeper	Hours Billed
From	To				
2/15/2002		Boutin,Dentino	Prepare for and attend deposition of Almaula	CG	4.10
2/18/2002	3/22/2002	Boutin,Dentino	Prepare summary of deposition of Allman	CG, CSK	6.70
2/18/2002	3/29/2002	Boutin,Dentino	Prepare summary of deposition of Almaula	CG, KAC	6.80
2/19/2002	2/21/2002	Boutin,Dentino	Research and memo regarding exclusion of speculative damages	DYR	11.90
3/5/2002	3/6/2002	Boutin,Dentino	Legal research regarding exclusion of Wigert testimony and admissibility of survey evidence	DYR	7.70
3/5/2002	3/7/2002	Boutin,Dentino	Prepare for Chivers deposition	CG	8.00
3/7/2002	3/11/2002	Boutin,Dentino	Legal research regarding exam of Allman using Ibbotson treatise	KAC	5.00
3/8/2002		Boutin,Dentino	Prepare for and attend Chivers deposition	CG	5.00
3/11/2002		Boutin,Dentino	Travel to and attend meeting with Dan Krupa	NMG	6.80
3/12/2002		Boutin,Dentino	Prepare for meeting with Muth, Cherry and Dinwiddie	NMG	8.00
3/12/2002		Boutin,Dentino	Travel to Reno for meeting with Adams and Hunter	NMG	3.70
3/13/2002		Boutin,Dentino	Prepare for and attend meeting with Adams and Cherry	NMG	10.60
3/14/2002		Boutin,Dentino	Prepare for and attend deposition of Chuck Peterson	CG	10.10
3/14/2002		Boutin,Dentino	Prepare for, travel and attend meeting with Hunter	NMG	7.30
3/15/2002		Boutin,Dentino	Travel to and attend meeting with experts Ploense, Glass and Dinwiddie	CG, NMG	14.70
3/16/2002		Boutin,Dentino	Prepare for and defend deposition of Ploense and Glass	NMG	0.70
3/18/2002		Boutin,Dentino	Meeting with Al Mueller in Newark	CG	11.10
3/18/2002		Boutin,Dentino	Prepare summary of depositions of Ploense and Glass	NMG	2.00
3/18/2002		Boutin,Dentino	Prepare for deposition of Williams	NMG	2.70
3/19/2002		Boutin,Dentino	Travel to and prepare for meeting with Williams	NMG	6.30
3/20/2002		Boutin,Dentino	Prepare for and attend meeting with Williams	NMG	8.90
3/20/2002	3/21/2002	Boutin,Dentino	Prepare summary of deposition of Chivers	KAC	5.20

Date		Firm	Description	Timekeeper	Hours Billed
From	To				
3/21/2002		Boutin,Dentino	Prepare, travel and attend meeting with Williams	NMG	10.30
3/22/2002		Boutin,Dentino	Trial call in Oakland	CG, NMG, SSS	23.10
3/25/2002	3/29/2002	Boutin,Dentino	Prepare summary of deposition of Petersen	CSK	28.50
3/26/2002		Boutin,Dentino	Travel to Oakland	CG, NMG	5.00
3/27/2002		Boutin,Dentino	Attend trial	CG, NMG, SSS	29.50
3/28/2002		Boutin,Dentino	Attend trial	CG, NMG, SSS	25.80
4/19/2002		Boutin,Dentino	Travel from Oakland	NMG	2.50
4/19/2002		Boutin,Dentino	Participate in telephone conference with Chivers' counsel regarding jury instructions	MEC	1.70
4/19/2002	4/20/2002	Boutin,Dentino	Summarize and outline Vapnick depositions and prepare for deposition	NMG	7.60
4/20/2002		Boutin,Dentino	Travel to Oakland	NMG	2.50
4/21/2002		Boutin,Dentino	Travel to Oakland	CG, SSS	5.00
4/22/2002		Boutin,Dentino	Attend trial	CG, SSS, NMG	34.00
4/23/2002		Boutin,Dentino	Attend trial	CG, SSS, NMG	36.80
4/24/2002		Boutin,Dentino	Attend trial	CG, SSS, NMG, MEC	38.50
4/25/2002		Boutin,Dentino	Attend trial	CG, SSS, MEC	35.10
4/25/2002		Boutin,Dentino	Travel from Oakland	NMG	2.50
4/25/2002	4/28/2002	Boutin,Dentino	Research regarding oral motion for reconsideration and directed verdict, including slander of title elements	NMG, KAC, DYR, MEC	43.50
Total for Pre Directed Verdict					1,346.50
Post Directed Verdict					
4/26/2002		Boutin,Dentino	Attend trial	CG, SSS, MEC	24.30
4/27/2002	4/28/2002	Boutin,Dentino	Prepare closing argument	CG, SSS, MEC	24.60
4/29/2002		Boutin,Dentino	Hearing on motion for reconsideration, argue jury instructions, prepare closing and travel	CG, SS, MEC, NMG	32.20
5/2/2002		Boutin,Dentino	Appear at court regarding jury replacement	SSS, NMG	4.00
5/3/2002		Boutin,Dentino	Travel to Sacramento	SSS	3.00

Date		Firm	Description	Timekeeper	Hours Billed
From	To				
5/3/2002	5/8/2002	Boutin,Dentino	Prepare closing brief	NMG, MEC, SSS, CG	55.10
5/9/2002		Boutin,Dentino	Prepare reply letter to Judge Kraetzer regarding DeVito letter	CG	0.80
5/14/2002	5/31/2002	Boutin,Dentino	Reply to Chivers' closing brief	CG, MEC, NMG, RMW, SSS	70.30
5/26/2002		Boutin,Dentino	Travel from Oakland	SSS, MEC	5.00
7/1/2002	7/30/2002	Boutin,Dentino	No invoice or billing information submitted		
7/10/2002	7/12/2002	Boutin,Dentino	Prepare letter to Al Mueller and Nick Kalanges regarding status and future proceedings	CG	4.90
7/10/2002	7/20/2002	Boutin,Dentino	Request for statement of decision	CG, MEC, RMW	7.30
8/9/2002	8/21/2002	Boutin,Dentino	Review proposed statement of decision and judgment and prepare objections	CG	17.20
8/9/2002	10/7/2002	Boutin,Dentino	Research standard for an award of attorney fees and costs, including apportionment	DYR, CG	25.60
9/4/2002		Boutin,Dentino	Review Chivers' response to object to statement of decision; letter to Judge Kraetzer	CG	0.90
9/5/2002	9/6/2002	Boutin,Dentino	Prepare reply to Chivers' response to objection to proposed judgment	CG	6.30
9/13/2002	11/6/2002	Boutin,Dentino	Prepare cost bill	SSS, CG	35.00
10/23/2002		Boutin,Dentino	Letter to Nick Kalanges and Al Mueller	CG	1.30
11/5/2002		Boutin,Dentino	Prepare for and attend meeting with N. Kalanges to review case status	CG	3.00
11/22/2002	11/29/2002	Boutin,Dentino	Motion to tax costs	DYR, CG	14.00
12/6/2002		Boutin,Dentino	Attend Chivers' ex parte on briefing issues	CG	2.00
12/6/2002		Wagner, Kirkman	Legal research regarding reversible error	RRG	1.50
12/9/2002		Wagner, Kirkman	Conference with Nick Kalanges	RRG, BKW	1.80
12/11/2002		Farmer, Murphy	Conference call with J. Thompson and N. Kalanges	CEF, MAC	2.40
12/11/2002		Farmer, Murphy	Research UTSA and review documents	GEM	0.80
12/11/2002		Wagner, Kirkman	Telephone conference with Farmer, Thompson and Kalanges	RRG	1.00

Date		Firm	Description	Timekeeper	Hours Billed
From	To				
12/11/2002	12/12/2002	Boutin,Dentino	Reply to opposition to PCBP motion to tax costs	DYR, CG	9.20
12/12/2002		Farmer, Murphy	Review and analysis of pleadings, statement of decision and judgment	MAC	2.00
12/12/2002	12/16/2002	Farmer, Murphy	Research regarding application of section 3426.4	MAC	5.70
12/14/2002	12/9/2002	Boutin,Dentino	Opposition to Chivers' motion to tax costs	CG, DYR	28.30
12/16/2002		Boutin,Dentino	Review and analysis of Chivers' reply brief	DYR	2.00
12/17/2002		Boutin,Dentino	Meeting with Craig Farmer and Mark Campbell, prepare summary memo	CG	2.70
12/18/2002		Farmer, Murphy	Research cases and issues relevant to fees motion; analysis of potential appeal	GEM, MAC	9.00
12/18/2002	12/20/2002	Farmer, Murphy	Drafter letter to client warning of risks associated with standard of review on appeal	MAC	6.30
12/20/2002		Farmer, Murphy	Telephone conference with Kalanges, Luchetti and Thompson regarding foregoing appeal	CEF, MAC	1.40
12/20/2002		Wagner, Kirkman	Review former opinion letter and conference with N. Kalanges regarding notice of appeal	CPB	1.50
12/20/2002	12/30/2002	Farmer, Murphy	Review documents and legal research regarding possible appeal and opposition to fees motion	GEM, MAC	17.80
12/21/2002	2/14/2003	Farmer, Murphy	Review case file information and research in preparation of opposition to Chivers' motion for attorney fees and sanctions	MAC, GEM, KF, CEF	147.40
12/31/2002		Farmer, Murphy	Research law regarding CCP 128.5 and safe harbor under 128.7	MAC	3.60
1/1/2003	1/2/2003	Farmer, Murphy	Research application of collateral estoppel in malicious prosecution action	MAC	1.90
1/2/2003		Boutin,Dentino	Prepare for and attend meeting with Craig Farmer and Mark Campbell	RMW, CG	4.60
1/2/2003	2/13/2003	Boutin,Dentino	Opposition to Chivers' motion for attorney fees	CG, SSS, NMG, DYR	84.20
1/6/2003		Wagner, Kirkman	Review Chivers' attorney fee motion; conference with N. Kalanges	RRG	4.80
1/7/2003		Farmer, Murphy	Develop chronology regarding opposition brief on genuine issues	CEF	4.30
1/8/2003		Farmer, Murphy	Letter to N. Kalanges regarding status	MAC	1.40
1/8/2003	1/10/2003	Farmer, Murphy	Motion to continue, including ex parte and review of documents	MAC, CEF	23.80



Date		Firm	Description	Timekeeper	Hours Billed
From	To				
1/13/2003		Farmer, Murphy	Appear at ex parte regarding motion to continue	MAC	6.20
1/16/2003		Farmer, Murphy	Appear at hearing on motion to continue, including travel	MAC	5.30
1/24/2003	2/4/2003	Boutin,Dentino	Opposition to sanctions motion	CG, NMB	25.50
1/31/2003		Boutin,Dentino	Apportionment of attorney fees for motion	DYR, NMG	4.20
2/6/2003		Farmer, Murphy	Meeting with N. Kalanges and edit brief	MAC	4.20
4/24/2003	4/25/2003	Boutin,Dentino	Review opposition brief and research Olmstead case, letter to Judge Kraetzer regarding same	CG, DYR	5.60
5/9/2003	5/20/2003	Boutin,Dentino	Review Chivers' reply in support of motion for attorney fees and draft objections	CG, DYR	21.00
5/14/2003	5/22/2003	Farmer, Murphy	Review Chivers' reply and prepare for hearing	MAC, CEF	14.80
5/21/2003	5/22/2003	Boutin,Dentino	Prepare for attorney fee hearing	CG	13.90
5/22/2003		Farmer, Murphy	Meeting with N. Kalanges regarding hearing status of case	MAC	1.70
5/23/2003		Farmer, Murphy	Prepare, travel and attend hearing on motion for attorney fees and sanctions	MAC	11.20
5/23/2003		Boutin,Dentino	Prepare for, travel and attend hearing on motion for attorney fees and sanctions, memo regarding same	CG	9.40
6/5/2003	6/6/2003	Boutin,Dentino	Compare ruling to motion, prepare order	CG	1.30
8/26/2003		Boutin,Dentino	Review exhibit list and protective order on return of confidential documents	CG	1.30
Total for Post Directed Verdict					831.80
Total					2,178.30



# PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW

Re: All Firms

## Examples of Interoffice Communications

Statement Date	Entry Date	Time-keeper	Description	Apprx Hours	Apprx Fees
<b>Boutin, Dentino, Gibson, Di Giusto, Hodell and West</b>					
12/11/2000	11/22/2000	NMG	Discussion with Chris Gibson re: motion to transfer venue	0.20	\$37.00
2/22/2001	1/9/2001	CG	Meeting with Ned Gelhaar to outline reply in support of motion to change venue	0.50	\$125.00
4/20/2001	3/5/2001	KAC	Conference with Chris Gibson re: trial brief setting forth (1) which claims, issues, relief and defenses will be heard by the judge, and which will be heard by the jury, and (2) in what proper order	0.80	\$100.00
7/18/2001	6/22/2001	NMG	Discussion with Chris Gibson re: strategy for jury consultant meeting	0.40	\$78.00
8/15/2001	6/1/2001	KAC	Conference with Chris Gibson re: same	0.50	\$62.50
8/15/2001	7/19/2001	NMG	Discussion with Sheri Stuckey re: document preparation	0.20	\$39.00
9/13/2001	8/4/2001	NMG	Discussion with Sheri Stuckey re: trial logistics	0.50	\$97.50
2/13/2002	1/23/2002	SSS	Prepare memo to Chris Gibson and Ned Gelhaar re: witness outlines	0.50	\$47.50
3/12/2002	2/18/2002	CG	Memo to Dani Rogers about damages claim	0.70	\$185.50
4/19/2002	3/29/2002	KAC	Conference with Chris Gibson re: strategy	0.50	\$67.50
5/15/2002	4/28/2002	MEC	Strategize with Ned Gelhaar re: motion for directed verdict on slander of title claim	1.40	\$231.00
8/12/2002	7/10/2002	RMW	Conference with Chris Gibson and Mike Chase re: alternatives; strategy; appeal	0.50	\$162.50
9/11/2002	8/12/2002	SSS	Telephone conversation with Nick in Dept 16 re: picking up original exhibits	0.10	\$9.50
10/3/2002	9/20/2002	MEC	Strategize with Chris Gibson re: potential post-trial motions, cost issues and appeal	0.50	\$82.50
10/3/2002	9/24/2002	DYR	Draft memorandum to Chris Gibson re: same	0.50	\$67.50
11/7/2002	10/7/2002	DYR	Continue drafting memorandum to Chris Gibson re: apportionment	0.90	\$121.50
12/4/2002	11/19/2002	DYR	Meeting with Chris Gibson re: enforcement of sanctions award, apportionment, and costs motion	0.30	\$40.50

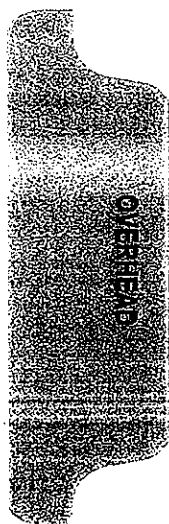
Statement Date	Entry Date	Time-keeper	Description	Apprx Hours	Apprx Fees
1/9/2003	12/16/2002	DYR	Draft memorandum to Chris Gibson re: same	0.90	\$121.50
2/7/2003	1/31/2003	NMG	Discussion with Danielle Rogers re: same and preparation and redaction of bills; discussion with Chris Gibson re: same	0.60	\$129.00
3/4/2003	2/7/2003	DYR	Meeting with Chris Gibson re: attorney fee apportionment	0.60	\$87.00
6/4/2003	5/22/2003	DYR	Meeting with Chris Gibson re: same	0.20	\$55.00
9/4/2003	8/26/2003	SSS	Discuss with Mr. Gibson	0.10	\$10.50

**Farmer, Murphy, Smith and Alliston**

12/31/2002	12/11/2002	CEF	Meeting with GEM, MAC to address request for assistance from R. Girard and Pacific Coast Building Products and strategies for handling motion for attorney fees and possible appeal	0.50	\$125.00
1/31/2003	1/16/2003	CEF	Telephone call with MAC re: continuance and possible 128.7 motion with opposition	0.20	\$50.00
2/28/2003	2/13/2003	MAC	Meeting with C. Gibson conforming the brief to his declaration and the exhibits	2.50	\$625.00
3/31/2003	3/13/2003	MAC	Telephone call to Roy Girard making sure he has entire brief with exhibits and pending briefing and hearing dates	0.30	\$75.00
5/31/2003	5/21/2003	CEF	Prehearing meeting with G. Gibson and MAC	2.00	\$500.00
6/30/2003	6/5/2003	MAC	Telephone call C. Gibson re: ruling on Chivers' motions	0.15	\$37.50

**Wagner, Kirkman, Blaine and Youmans**

1/31/2003	12/11/2002	RRG	Telephone conference with Farmer	0.20	\$43.00
1/31/2003	12/12/2002	RRG	Telephone conference with Farmer; review correspondence from Farmer	0.30	\$64.50
1/31/2003	12/17/2002	RRG	Prepare letter to Craig Farmer	2.00	\$430.00
1/31/2003	12/20/2002	CPB	Telephone conference with Mark Campbell	0.20	\$47.00



# PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW

## Re: All Firms Examples of Overhead

Statement Date	Entry Date	Time-keeper	Description	Apprx Hours	Apprx Fees
<b>Boutin, Dentino, Gibson, Di Giusto, Hodell and West</b>					
12/11/2000	11/17/2000	CG	Schedule new trial related dates	0.60	\$135.00
5/21/2001	4/13/2001	CG	Recalendar all pretrial deadlines	0.60	\$150.00
6/14/2001	5/28/2001	CG	Review National Jury Project's proposal; letter to Al Mueller and Nick Kalanges	0.30	\$75.00
7/18/2001	6/21/2001	CG	Review jury consultant's contract	0.80	\$200.00
8/15/2001	7/19/2001	SSS	Prepare letter to Gina DeVito re: additional documents and video; print case law for motion in limine (#2)	1.00	\$85.00
9/13/2001	8/2/2001	SSS	Prepare volumes of documents for filing and production to opposing counsel; telephone conversations with the Oakland Marriot Hotel; meeting with Chris Gibson re: status of filings	7.70	\$654.50
2/13/2002	1/23/2002	SSS	Review, index and file miscellaneous pleadings and correspondence	0.30	\$28.50
3/12/2002	2/12/2002	SSS	Organize trial boxes; research deposition of Satish Almaula; telephone conversation with Phillips & Association re: deposition of Mr. Almaula	0.50	\$47.50
4/19/2002	3/30/2002	SSS	Review, index and file miscellaneous pleadings and correspondence	1.30	\$123.50
5/15/2002	4/28/2002	SSS	Prepare instruction letter to Manny Bal re: filing directed verdict motions	0.30	\$28.50
9/11/2002	8/12/2002	SSS	Email Chris Gibson re: conversation and discuss potentiality of appeal	0.10	\$9.50
11/7/2002	10/29/2002	SSS	Telephone conversations with Nick from Dept 16 concerning original trial exhibits	0.10	\$9.50
12/4/2002	11/6/2002	SSS	Telephone conversations with Manny Bal re: filing cost bill; prepare instructions for filing and copies of cost bill	0.50	\$47.50
1/9/2003	12/18/2002	SSS	Prepare copies of documents per Craig Farmer's request; telephone conversation with Yolanda at Mr. Farmer's office; prepare letter to Mr. Farmer transmitting requested documents	1.50	\$142.50
2/7/2003	1/31/2003	SSS	Prepare fax to Mark Campbell with specific jury instructions	0.50	\$52.50
3/4/2003	2/5/2003	SSS	Convert email transcripts of Sid Dinwiddie's testimony to transfer to Mark Campbell and print hard copy; prepare email to Rachael Miller re: incomplete testimony	0.60	\$63.00

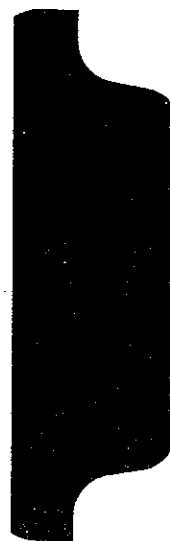
Statement Date	Entry Date	Time-keeper	Description	Apprx Hours	Apprx Fees
4/3/2003	3/4/2003	SSS	Receive letter from Linda Harris re: Cam Adams' 4/16/02 trial testimony; email Mark Campbell transmitting Mr. Adams' testimony	0.10	\$10.50
5/5/2003	4/1/2003	CG	Letter to Gina DeVito with check	0.20	\$55.00
9/4/2003	8/26/2003	SSS	Telephone conversation with Nick Caporicci at Dept 16 re: picking up trial exhibits; prepare email to Chris Gibson re: status of trial exhibits	0.10	\$10.50

**Farmer, Murphy, Smith and Alliston**

12/31/2002	12/11/2002	CEF	Conference call with Jim Thompson, Nick Kalanges, R. Girard, GEM, MAC to address parameters of legal services, retainer letter, coordination with Chris Gibson	0.40	\$100.00
1/31/2003	1/16/2003	MAC	Instruction to staff re: loading transcripts on to Summation	0.20	\$50.00
2/28/2003	2/13/2003	MAC	Preparation of copies of federal authority for submission to the court	0.40	\$100.00
3/31/2003	3/13/2003	MAC	Review and analyze Boutin bill, email to N. Kalanges re: same	0.60	\$150.00
4/30/2003	4/1/2003	MAC	Email to N. Kalanges following up on payment of costs	0.15	\$37.50
4/30/2003	4/2/2003	MAC	Review and analyze email from N. Kalanges re: costs payment, telephone call, left extended message for C. Gibson, call from Gibson	0.20	\$50.00
5/31/2003	5/30/2003	MAC	Drafting of letter to Pacific Coast's accountants re: litigation contingencies	0.50	\$125.00

**Wagner, Kirkman, Blaine and Youmans**

1/31/2003	12/11/2002	RRG	Review file re: documents to be provided Farmer	1.00	\$215.00
-----------	------------	-----	---	------	----------





**PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW**

**Re: All Firms**

**Examples of Vague Billing Entries**

Statement Date	Entry Date	Time- keeper	Description	Apprx Hours	Apprx Fees
Boutin, Dentino, Gibson, DiGiusto, Hodell and West					
8/15/2001	7/19/2001	NMG	Review prior outlines	1.40	\$273.00
4/19/2002	3/29/2002	NMG	Organize to prepare for trial	6.20	\$1,271.00

**EXAMPLES OF BLOCK  
BILLING**

# PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW

Re: All Firms

## Examples of Block Billing

Statement Date	Entry Date	Time-keeper	Description	Apprx Hours	Apprx Fees
<b>Boutin, Dentino, Gibson, Di Giusto, Hodell and West</b>					
12/11/2000	11/28/2000	NMG	Research and finish file review for venue transfer motion; research alternative grounds of motion for reconsideration, motion for error corim nobis, motion for new trial etc.	5.90	\$1,091.50
4/20/2001	3/9/2001	CG	Telephone conference with Merv Reykdal's attorney about case status; telephone conference with David Ploense; letter to Ploense; review calendar for appropriate trial dates; telephone conference with Sin Dinwiddie; review Sid's letter and memo; telephone conference with Nick Kalanges; telephone conference with Al Mueller; telephone conference with Paul Vapnek; telephone conference with DeVito; review DeVito's letter and stipulation; letter to DeVito; follow-up calls with DeVito	4.20	\$1,050.00
4/20/2001	3/19/2001	CG	Meeting with Kellie Cook about brief on right to jury; review David Ploense's letter; letter to Ploense with Almaula deposition; coordinate trial date; telephone conference with Sid Dinwiddie; telephone conference with Nick Kalanges; letter to Al Mueller with videotape; letter to Mueller and Kalanges about jury consultant; review information about jury consultant	1.50	\$375.00
9/13/2001	8/1/2001	CG	Telephone conference with court about case status; review Chivers' amended exhibit list; review new exhibits; prepare objections to exhibits; prepare motion in limine to bar portions of Hillman's testimony; meeting with Dave Lucchetti and Nick Kalanges; telephone conference with Linda Hale	9.20	\$2,300.00



Cost Description	Post-Tender										Post-Tender Total
	9/13/2001	10/18/2001	11/12/2001	12/7/2001	2/13/2002	3/12/2002	4/19/2002	5/15/2002			
Admin Costs	\$1,228.68	\$17.00	\$19.00	\$3.00	\$101.16	\$848.39	\$4,472.35				\$10,347.38
All Other Costs (from missing pages)											\$0.00
Computer Research	\$304.96		\$275.33			\$7.71	\$150.00	\$40.71			\$1,115.26
Conference Call/Room						\$150.00					\$300.00
Courier Service	\$302.00										\$307.00
Deposition Transcripts											\$0.00
Expert/Consultants Fees and Expenses						\$1,120.00	\$7,922.94	\$1,400.00			\$13,052.94
Fax Cost	\$36.75	\$1.50			\$6.75	\$128.25	\$237.75	\$111.00			\$654.75
Federal Express	\$45.97						\$424.44				\$554.08
Filing Fee			\$23.00				\$46.00	\$1,600.00			\$1,669.00
Investigation Service							\$1,478.75				\$1,543.75
Less Prepaid Cash Applied											\$0.00
Malott & Peterson								\$756.00			\$756.00
Meal Expense								\$632.29			\$632.29
Miscellaneous								\$76.12			\$76.12
Office Supplies Reimbursement							\$88.71				\$88.71
Outside Photography							\$305.29	\$260.22			\$565.51
Parking								\$187.84			\$187.84
Phillips Legal Services						\$63.70	\$1,175.50				\$1,239.20
Photocopying							\$302.46				\$302.46
Professional Services											\$0.00
Railroad Industries	\$886.80										\$886.80
Telephone											\$0.00
Townsend & Townsend											\$0.00
Transcript Fee											\$0.00
Travel/Mileage Expenses	\$881.00						\$5,832.54	\$6,939.10			\$13,652.64
Trial Preparation/Testimony											\$0.00
Void Check to Superior Court											(\$231.00)
<b>Total</b>	<b>\$3,686.16</b>	<b>\$18.50</b>	<b>\$317.33</b>	<b>\$3.00</b>	<b>\$107.91</b>	<b>\$2,318.05</b>	<b>\$22,436.73</b>	<b>\$12,003.28</b>			<b>\$47,400.73</b>

Cost Description	Post Directed Verdict									
	5/15/2002	6/15/2002	8/12/2002	9/11/2002	10/3/2002	11/7/2002	12/4/2002	12/31/2002	4/9/2003	
Admin Costs	\$7,018.85	\$1,529.67	\$161.00		\$264.28	\$69.86	\$218.64		\$828.79	
All Other Costs (from missing pages)	\$6,511.22									
Computer Research		\$804.06	\$210.12							
Conference Call/Room									\$50.04	
Courier Service									\$130.00	
Deposition Transcripts		\$949.00								
Expert/Consultants Fees and Expenses		\$7,352.41								
Fax Cost	\$110.25	\$73.50	\$30.00		\$19.50		\$3.00		\$15.75	
Federal Express		\$106.45			\$47.17				\$69.17	
Filing Fee	\$800.00								\$63.30	
Investigation Service			\$153.00							
Less Prepaid Cash Applied			(\$101.13)						(\$2,204.48)	
Malott & Peterson	\$810.00									
Meal Expense										
Miscellaneous										
Office Supplies Reimbursement										
Outside Photocopy										
Parking										
Phillips Legal Services										
Photocopying								\$495.15		
Professional Services					\$75.00					
Railroad Industries										
Telephone		\$40.48								
Townsend & Townsend		\$7,396.79								
Transcript Fee										
Travel/Mileage Expenses	\$2,163.50	\$411.33								
Trial Preparation/Testimony										
Void Check to Superior Court										
Total	\$17,413.82	\$18,663.69	\$452.99	\$387.43	\$405.95	\$69.86	\$221.64	\$495.15	(\$1,047.43)	

Cost Description	Post Directed Verdict									
	1/31/2003	2/7/2003	2/28/2003	3/4/2003	3/31/2003	4/3/2003	5/5/2003	5/31/2003	6/4/2003	
Admin Costs		\$922.28		\$387.88		\$21.22	\$66.70		\$485.22	
All Other Costs (from missing pages)										
Computer Research	\$250.56		\$116.00		\$280.14					
Conference Call/Room										
Courier Service			\$212.00	\$21.00				\$122.00		
Deposition Transcripts				\$859.50						
Expert/Consultants Fees and Expenses										
Fax Cost	\$5.00									
Federal Express			\$27.91							
Filing Fee	\$50.60									
Investigation Service										
Less Prepaid Cash Applied										
Malott & Peterson										
Meal Expense										
Miscellaneous										
Office Supplies Reimbursement										
Outside Photocopy		\$879.10								
Parking										
Phillips Legal Services										
Photocopying	\$31.35		\$37.80					\$31.65		
Professional Services										
Railroad Industries										
Telephone										
Townsend & Townsend										
Transcript Fee		\$488.75		\$1,287.75						
Travel/Mileage Expenses	\$95.80									
Trial Preparation/Testimony				\$49.44						
Void Check to Superior Court										
Total	\$433.91	\$2,290.13	\$393.71	\$2,605.57	\$280.14	\$21.22	\$66.70	\$153.65	\$485.22	

Cost Description	Post Directed Verdict					Post Directed Verdict Total	
	6/30/2003	7/14/2003	8/8/2003	9/4/2003	10/3/2003	Verdict Total	Grand Total
Admin Costs		\$38.50	\$1.10	\$26.56	\$6.60	\$12,424.32	\$22,771.70
All Other Costs (from missing pages)						\$6,511.22	\$6,511.22
Computer Research	\$34.48					\$1,695.36	\$2,810.62
Conference Call/Room						\$50.04	\$350.04
Courier Service						\$485.00	\$792.00
Deposition Transcripts						\$1,808.50	\$1,808.50
Expert/Consultants Fees and Expenses						\$7,352.41	\$20,405.35
Fax Cost						\$257.00	\$911.75
Federal Express	\$14.53					\$275.49	\$829.57
Filing Fee						\$913.90	\$2,582.90
Investigation Service						\$153.00	\$1,696.75
Less Prepaid Cash Applied					(\$0.09)	(\$2,305.70)	(\$2,305.70)
Malott & Peterson						\$810.00	\$1,566.00
Meal Expense						\$0.00	\$712.78
Miscellaneous						\$0.00	\$76.12
Office Supplies Reimbursement						\$0.00	\$88.71
Outside Photocopy						\$879.10	\$1,444.61
Parking						\$0.00	\$187.84
Phillips Legal Services						\$0.00	\$1,239.20
Photocopying						\$595.95	\$898.41
Professional Services						\$75.00	\$75.00
Railroad Industries						\$0.00	\$886.80
Telephone						\$40.48	\$40.48
Townsend & Townsend						\$7,396.79	\$7,396.79
Transcript Fee						\$1,776.50	\$1,776.50
Travel/Mileage Expenses						\$2,670.63	\$16,323.27
Trial Preparation/Testimony						\$49.44	\$49.44
Void Check to Superior Court						\$0.00	(\$231.00)
<b>Total</b>	<b>\$49.01</b>	<b>\$38.50</b>	<b>\$1.10</b>	<b>\$26.56</b>	<b>\$6.60</b>	<b>\$43,914.43</b>	<b>\$91,695.65</b>



**Expert/Consultant  
Fees and Costs**

**PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW**

**National Jury Project Trial Consultants (Experts/Vendors)**

**Total Fees & Costs Billed**

<b>Statement Date</b>	<b>Fees Billed*</b>	<b>Costs Billed</b>	<b>Total Fees &amp; Costs Billed</b>
8/17/2001	\$11,568.12	\$7,213.36	\$18,781.48
4/22/2002	\$12,376.25	\$174.48	\$12,550.73
<b>Total</b>	<b>\$23,944.37</b>	<b>\$7,387.84</b>	<b>\$31,332.21</b>

\* Average hourly rate is \$201.72

**Expert/Consultant**  
**Total Hours Billed**

**PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW**  
**National Jury Project Trial Consultants (Experts/Vendors)**  
**Total Hours Billed Per Person**

<b>Timekeeper</b>	<b>8/17/2001</b>	<b>4/22/2002</b>	<b>Total</b>
Koonan, Karen Jo	33.70		33.70
Logistics Coordinator	7.50		7.50
Lunsford, Terry		33.55	33.55
Rountree, Will	16.55	27.40	43.95
<b>Total</b>	<b>57.75</b>	<b>60.95</b>	<b>118.70</b>

**Expert/Consultant  
Total Costs Billed**

**PACIFIC COAST BUILDING PRODUCTS V. CHIVERS FEE REVIEW**  
**National Jury Project Trial Consultants (Experts/Vendors)**  
**Itemization of Costs**

<b>Cost Description</b>	<b>8/17/2001</b>	<b>4/22/2002</b>	<b>Total</b>
Express Mail		\$98.49	\$98.49
Facility	\$1,700.00		\$1,700.00
Food for respondents and attorneys	\$223.00		\$223.00
Mileage and Tolls	\$68.09		\$68.09
Photocopying		\$75.99	\$75.99
Photocopying, fax and telephone	\$262.27		\$262.27
Recruitment	\$2,185.00		\$2,185.00
Respondents' cooperation fees	\$2,375.00		\$2,375.00
Stationary video equipment	\$400.00		\$400.00
<b>Total</b>	<b>\$7,213.36</b>	<b>\$174.48</b>	<b>\$7,387.84</b>

# EXHIBIT “B”

January 7, 2005

PRELIMINARY REPORT OF ROBERT L. SIEMS

I have been retained by National Union Insurance Company as an expert witness in the case styled Pacific Coast Building Products, Inc. v. National Union Fire Insurance Company U.S.D.C., Eastern District of California No. S-04-1059 LKK (KJM) to opine on whether National Union's handling of the tender of the defense of Pacific Coast was reasonable and in good faith. I have prepared the following report in compliance with Rule 26(a)2(b) of the Federal Rules of Civil Procedure. I have attached my resume, setting forth my qualifications and experience. I am being compensated at a rate of \$300 per hour for my work as a consulting expert and for my work as a testifying expert, plus reasonable expenses.

OPINION

National Union's handling is reasonable and consistent with the standard of professional care in the property and casualty industry.

BASIS FOR OPINION

The claim handling was reasonable and consistent with the standard of care.

In May 1997, Pacific Coast files suit against its former employee, Morgan A. Chivers in *Pacific Coast Building Products, Inc. v. Chivers*, Sacramento County Superior Court Case No. 97AS02753 (Pacific v. Chivers lawsuit) alleging trade secret misappropriation of a newly developed technology for asphalt waste recycling. In September 1997, Chivers filed a cross-complaint against Pacific Coast and its vice-president Alfred Mueller (Chivers cross-complaint) alleging Intentional Misrepresentation/ Fraud, Negligent Misrepresentation/ Fraud, Declaratory relief, Negligent Infliction of Emotional Distress, and Intentional Infliction of Emotional Distress.

On November 16, 2000, Pacific Coast tendered the defense of the cross-complaint to National Union by letter from Rick Wilson to AIG's Case Control Unit in Portland, Oregon.



National Union had provided insurance coverage to Pacific Coast under Commercial General Liability Insurance Policy No. GL 5909252 RA from September 29, 1994 to September 29, 1995 and under Policy No. GL 5909297 RA from September 29, 1995 to September 29, 1996.

On November 28, 2000 the claim administrator for National Union responded in writing to the tender. On December 7, 2000, Pacific's attorney replied with enclosures.

On January 4, 2001, AIG assigned the coverage issues to outside counsel at McCormick, Barstow, Sheppard, Wayte & Carruth LLP (McCormick Barstow). That firm sent an analysis of the coverage to Pacific on June 20, 2001. On August 9, 2001, counsel for Pacific, Norman J. Roger, Roger, Scott & Helmer LLP (Roger, Scott) responded to the McCormick letter. A confidential meeting followed in October 2001 between representatives and counsel for Pacific and National Union. This was followed by a February 27, 2002 letter titled as a confidential and privileged settlement communication from McCormick, Barstow to Roger, Scott. McCormick, Barstow subsequently called Roger, Scott to request a response then sent a July 31, 2002 letter to the Roger firm requesting a response. Mr. Roger called McCormick, Barstow on August 6, 2002 and said that he would send information. There was no further contact until February 2004 when Kimberly Amick, new counsel for Pacific called on its behalf.

In the interim, Chivers had dismissed the causes of action in his cross-complaint for intentional and negligent infliction of mental distress on March 27, 2002. A directed verdict was granted against Chivers on April 25, 2002 on the causes of action for intentional misrepresentation/ fraud and negligent misrepresentation/ fraud. No judgment was entered against Pacific on any cause of action alleged in the Chivers cross-claim.

The Complaint for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing was filed in February 2004. The specific bad faith allegations follow:

Defendants breached the covenant of good faith and fair dealing to Pacific Coast as follows:

- a. By unreasonably and without cause failing to conduct a competent and timely investigation into the facts which give rise to the National Union's duty to defend Pacific Coast in the *Chivers* action;
- b. By unreasonably and without cause declining coverage under the National Union policies despite their clear language of the insurance contracts obligating National Union to provide Pacific Coast with a defense in the *Chivers* action;
- c. By unreasonably and without cause refusing to pay Pacific Coast's defense costs and fees incurred in the *Chivers* action as obligated by the terms of the policy;

- d. By attempting to leverage coverage due under the National Union policies to Pacific Coast by negotiating to pay a lesser amount than defendants were obligated to pay under the policies in return for partial coverage;
- e. By placing interests ahead of the interest of Pacific Coast in resolving this claim causing the company to pay its own defense fees and costs;
- f. By basing their coverage decisions on a desire to reduce or avoid their obligations to Pacific Coast;

Pacific's allegations are narrowed to the coverage under the Personal Injury section of the two policies. Those sections provide as follows:

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this insurance applies.
- b. This insurance applies to "personal injury" only if cause by an offense:
  - 1. Committed in the "coverage territory" during the policy period; and
  - 2. Arising out of the conduct of your business excluding advertising, publishing, broadcasting or telecasting done by or for you.
- c. This insurance applies to "advertising injury" only if caused by an offense committed:
  - 1. In the "coverage territory" during the policy period; and
  - 2. In the course of advertising your goods, products or services.

"Advertising injury" means injury arising out of one or more of the following offenses:

- a. Oral or written publication of material that slanders or libels person or organization or disparages a person's or organization's goods, products or services.
- b. Oral or written publication of material that violates a person's right to privacy;
- c. Misappropriation of advertising ideas or style of doing business; or
- d. Infringement of copyright, title or slogan.

"Personal injury" means injury, other than "bodily injury," as injuring arising out of one of the following offenses:

- (a) False arrest, detention or imprisonment;
- (b) Malicious prosecution;
- (c) Wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;
- (d) Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods. Products or services; or
- (e) Oral or written publication of material that violates a person's right of privacy.

The policy also contains these conditions:

- b. If a claim is made or "suit" is brought against any insured, you must see to it that we receive prompt written notice of the claim or "suit."
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;
- d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

The analysis of whether the insurer has a duty to defend begins within the four corners of the Complaint. The claim professional compares the allegations within the Complaint to the contract language describing the coverage. When the claim professional becomes aware of extrinsic information, it is further considered in this comparison with the contract language describing the coverage. The claim professional is prohibited from damaging the interests of the insured by performing this comparison unreasonably and in bad faith. That is not what has taken place here.

The defense of the cross-claim was not tendered to the claim administrator for National Union until more than three years after the cross-claim had been filed. The cross-claim and deposition summary excerpts were included as part of this tender. Less than two weeks later, AIG responded in writing. A transcript of Mr. Chiver's deposition was requested as was documentation of any comments made which may have damaged Mr/ Chiver's reputation. Pacific replied by letter of December 7, 2000, sending it's original and first amended complaint and more from the deposition summary. Apparently, the deposition transcript has never been produced to the insurer. On January 4, 2001, the possibility of coverage was referred by the AIG claim professional to outside defense counsel at the McCormick firm.

The records that I have reviewed demonstrate a prompt response by the insurer to the insured's tender of the defense. The first acknowledgement letter goes out less than two weeks after the tender. The second letter is sent out a little more than one week after the next correspondence had been received from Pacific. In the second letter, the claim professional asks for extrinsic material and specifically requests documentation of any comments made which may have damaged Mr. Chiver's reputation. When Pacific replies, the claim professional refers the coverage question for expert analysis by outside coverage counsel. This activity shows competent and reasonable claim practice under these circumstances.

Once the coverage question is referred to outside counsel, the dispute on coverage continues pursuant to customary industry practice. A sophisticated policyholder and a sophisticated insurer continue to dispute the potentiality of coverage. . The question of whether the duty to defend was triggered is complex. Original counsel retained by National Union and

counsel retained by Pacific Coast argued the subtleties of the coverage issues for over two years. New counsels for the parties continue the dispute in this litigation. Their arguments change and mature in the memos that have been filed with the Court to support pending motions for summary judgment on the coverage issues. That those issues are genuine is reflected by not only their substance but by the difficulty each side has in framing the issues and supporting its arguments. Where attorneys with specialized expertise in coverage law produce contradictory coverage analysis and positions like those here, the claim professionals for National Union cannot reasonably be expected to know the ultimate answer.

As the case has developed, any duty to indemnify has been negated with final disposition of the underlying litigation. That litigation essentially involved a commercial dispute over ownership of a newly developed technology for asphalt waste recycling. This is not typically consistent with the risk transfer at the heart of the insurance market.

I reserve the right to revise and supplement my opinions in this matter. The claim file and deposition transcripts are yet to be reviewed. These and any additional documents and discovery materials may change my opinion.

**I have prepared this report based on my review of the following:**

Complaint for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

Answer to Plaintiff's Unverified Complaint; Demand for Jury Trial

Certificate and Notice of Interested Parties

Notice of Motion by Defendant National Union for Complete, or Partial, Summary Judgment

Defendant National Union's Memorandum of Points and Authorities in Support of its motion for Complete, or Partial, Summary Judgment

Defendant National Union's Separate Statement of Undisputed Material Facts in support of its Motion for Complete, or Partial, Summary Judgment

Declaration of Patrick Fredette In Support of National Union's Motion for Complete, or Partial, Summary Judgment

Request for Judicial Notice in Support of National Union's Motion for Complete, or Partial,  
Summary Judgment

Declaration of N. David Lyons in Support of National Union's Motion for Complete, or Partial,  
Summary Judgment

Plaintiff Pacific Coast Building Products, Inc.'s Opposition to Defendant National Union's Motion  
for Complete, or Partial, Summary Judgment

Defendant National Union's Reply Memorandum of Points and Authorities in Support of its Motion  
for Complete, or Partial, Summary Judgment

**Other Cases in which I have Testified at Deposition or Trial as an Expert Witness within the  
Preceding Four Years**

Expert witness for Defense: *American Manufactures Mutual Insurance  
Company v. Merastar Insurance Company*  
Expert witness for Defendant/Counter-claimant: *Safeway Insurance Company v.  
Steven Botma; Patricia Himes v. General Motors Corporation*  
Expert witness for Plaintiff/Insured: *Terry v. Medical Mutual*  
Expert witness for Plaintiff: *House v. Princeton*  
Expert witness for Defendant: *Greenway Environmental Inc. v. Reservoir Capital  
Corporation*  
Expert witness for Defendant: *Bank of America v. Zurich North America*

I will be providing a copy of my C.V., copies of expert reports submitted from me in the  
other cases in which I have submitted written reports as an expert, and cover pages from those  
cases in which I have been identified as an expert witness and given testimony.

Respectfully submitted,

By: \_\_\_\_\_  
Robert L. Siems

**Robert L. Siems**  
3683 Clipper Mill Road, Baltimore, MD 21211  
(410) 366-3796

---

**EXPERIENCE:**

**Law Offices of Robert L. Siems, P.A.** 8/99 to present

Founded to provide excellent legal services to insurers and policyholders on first and third party claim litigation and coverage, extracontractual litigation, major injury litigation and fraudulent claim investigations and reinsurance issues and to provide alternative dispute resolution services.

**ST. PAUL FIRE AND MARINE INSURANCE COMPANY, Group**  
**Counsel/ National Extracontractual Claims Counsel, Assistant Vice President, 3/98 to 8/99**

- Management of all extracontractual litigation against St. Paul nationwide including Commercial Lines, Personal Lines, E&O, Surety, and Property
- Management of major injury litigation against St. Paul and its insureds in the Mid-West
- General Counsel to company's Special Investigation Unit
- Hired, supervised and provided guidance to team of attorneys and claim professionals

**USF&G, Group Counsel, Assistant Vice President, 1992 to 1998**

- Management of all extracontractual litigation against USF&G nationwide
- Management of all major injury litigation against USF&G and its insureds in the Mid-West
- Claims counsel to Family Business and Insurance Group
- Hired, supervised and provided guidance to team of attorneys and claim professionals

**FRANCOMANO, KARPOOK AND SIEMS, Partner, 1991 to 1992**

- Managing Litigation Counsel in 7-attorney firm representing businesses, insurance companies and individual clients.

**COHAN AND FRANCOMANO, Partner, 1990**

- Managing Litigation Counsel in 11-attorney firm that was predecessor to above firm.

**O'DOHERTY, GALLAGHER AND NEAD, Associate/Partner, 1981 to 1990**

- Tried over 50 cases to jury verdict for insurance companies and their insureds

**VERDERAIME AND DUBOIS, P.A.**, Associate, 1979 to 1981

**EDUCATION:**

**Executive M.B.A.**, 2000

LOYOLA COLLEGE, Baltimore, Maryland

**Juris Doctor**, 1979

UNIVERSITY OF BALTIMORE SCHOOL OF LAW, Baltimore, Maryland

- Outstanding Advocate Award
- Treasurer, Student Bar Association
- Coordinator, Prisoner Information Services (ABA Award)

**B.A. in English**, 1974

UNIVERSITY OF MIAMI, Coral Gables, Florida

**Academic Diploma**, 1970

GILMAN SCHOOL, Baltimore, Maryland

**CERTIFICATIONS AND DESIGNATIONS**

- CPCU, 1997

**PROFESSIONAL LICENSES AND ASSOCIATIONS**

- Martindale-Hubbell AV Rating
- Admitted, Maryland State Bar (1979) and United States District Court (1980)
- Member, Maryland State Bar Association
- Instructor and Author, Maryland Institute of Continuing Programs for the Education of Lawyers
- Member, Maryland Defense Counsel, Inc., current; President 1989-1990
- Member, Defense Research Institute (DRI)
  - Instructor and Author-1997 Annual DRI Seminar "Law of Mediation: Court Decisions and Legal Issues", Washington D.C.
  - Instructor: Negotiations in Excess and Reinsurance at 1999 DRI Excess and Reinsurance Seminar, New Orleans, LA.
  - DRI Outstanding Service Award, 1990
- Certified Maryland Mediator under Maryland Rule 17-106 (12/00 to present)
  - Appointed Civil Mediator for the Circuit Court for Baltimore City, Baltimore County, Anne Arundel County, Howard County, Montgomery County, Frederick County).
  - Completion of MICPEL's Bankruptcy Mediation course (December 2003).

- Member, CPCU Society and Maryland Chapter of CPCU Society, 1997 to present
  - Member of National Information Technology section and co-editor of its newsletter, Cutting Edge, 2001 to present
  - Board of Directors of Maryland Chapter, 2004 -2007

## COMMUNITY ACTIVITIES

Board of Directors, Cystic Fibrosis Foundation of Maryland  
Board of Directors, Hannah More School  
Board of Directors, CPCU Society, Maryland Chapter

## PUBLICATIONS AND PROFESSIONAL INSTRUCTION

- ADR Critique for MICPEL Civil Mediation Seminar October 2004
- "How the Law Influences Policy Provisions," SITE (Society Of Insurance Trainers & Educators) and CPCU seminar, October 2004
- "Bad Faith Litigation in Maryland" and "Liability and Uninsured/Underinsured Motorist Coverages," *Insurance Law Institute, Maryland Institute for Continuing Professional Education of Lawyers (MICPEL)*: April 2004.
- INSURANCE BAD FAITH: A COMPENDIUM OF STATE LAW (Defense Research Institute, 2004), Regional editor and contributing author
- Gary Blake and Bob Siems, "Careless Writing and Bad Faith Law Suits," Claims, February 2004, 23.
- Robert L. Siems, "Discovery and Trial of Bad Faith Actions," Lorman Education Services seminar and written materials on Insurance Bad Faith Claims in Maryland, instructor and author, October 21, 2003.
- Robert L. Siems, "Information Technology and Fraud Prevention," CPCU Cutting Edge Newsletter (April 2003); Volume X No. 1.
- Co-Editor, Cutting Edge, CPCU Society Information Technology Section Quarterly, 9/01 to present.
- "Terrorism Risks Under Commercial Property Coverage; How to Handle a Terrorism Claim, *CPCU Society of Maryland and Mariners of the Bay*, February 19, 2003.
- Robert L. Siems, "A Primer for Counsel: Litigate, Arbitrate, or Mediate the Bad Faith Action," For the Defense, July 2002, 41.
- Robert L. Siems and Anthony R. Zelle, "Not Business as Usual: Handling Claims Arising from September 11," For the Defense, May 2002, 25.
- "Bad Faith," instructor, *Insurance Law Institute, Maryland Institute for Continuing Professional Education of Lawyers (MICPEL)*: June 2001.
- "Bad Faith," instructor, *Baltimore Claims Persons Association*.
- "Bad Faith," instructor, *Maryland Defense Counsel, Inc.* May 2, 2000
- "Bad Faith," instructor, *USF&G and St. Paul* 1992 – 1999
- "What Insurance Companies are Looking for from Outside Counsel," instructor, *Niles, Barton & Wilmer*: April 27, 2000 and *The Harmonie Group*: May 19, 2000



- Excess Panel Discussion on Negotiation, Excess and Reinsurance Seminar, The Defense Research Institute, Inc., April 1999, New Orleans, La.
- The Law of Mediation, Mediation Seminar, The Defense Research Institute Inc, April 17-18, 1997, ANA Hotel Washington D.C. Automobile Liability
- Maryland Automobile Accident Deskbook, author of "Rear-End Accidents" Chapters 4, and of "Insurance: PIP, Uninsured Motorists, and Liability Provisions," Chapter 18, Maryland Institute for Continuing Professional Education of lawyers (MICPEL), First and Second Editions.
- "Liability Insurance, Uninsured Motorists, PIP," instructor, MICPEL: 1994 - present.
- "Nine Day Intensive Trial Advocacy Program," member of faculty and instructor on direct examination, MICPEL: 2000
- "Insurance Law (6-week program)," member of faculty, MICPEL: 1996, 1998 and 2000
- "Rules and Regulations," instructor, CPCU, Maryland Chapter, May 20, 1998
- Defense Research Institute liaison for Trial Tactics and Techniques Committee for DRI International Conference (May, 2001)

#### EXTRACONTRACTUAL CASE WORK

- Legal Consultant on bad faith issues: *Employers Reinsurance Corporation v. Pioneer Electronics, Inc. (2000)*
- Expert witness for Defense: *Westchester Fire Insurance Company v. ATC/Vancom, Inc.*
- Expert witness for Defense: *American Manufactures Mutual Insurance Company v. Merastar Insurance Company*
- Expert witness for Defendant/Counter-claimant: *Safeway Insurance Company v. Steven Botma; Patricia Himes v. General Motors Corporation*
- Expert witness for Plaintiff/Insured: *Terry v. Medical Mutual*
- Expert witness for Plaintiff: *House v. Princeton*
- Expert witness for Defendant: *Greenway Environmental Inc. v. Reservoir Capital Corporation*
- Expert witness for Defendant: *Bank of America v. Zurich North America*

#### REFERENCES

John W. Bell; Johnson & Bell LTD.; Suite 2200, 222 North LaSalle Street; Chicago, Illinois 60601; (312) 372 - 0770

William V. Johnson; Johnson & Bell LTD.

Robert Kiesler; Kielser & Berman; Suite 1300, 188 W. Randolph Street; Chicago, Illinois 60601; (312) 332 - 2840

